

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

**Ex parte** CRAIG ALAN BENNETT

---

Appeal No. 2003-1045  
Application No. 08/797,079

---

ON BRIEF

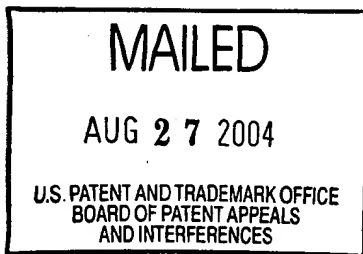
---

Before KRASS, DIXON, and BLANKENSHIP, **Administrative Patent Judges**.  
DIXON, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the examiner's final rejection of claims 1, 3-10, 12, 14-17, 21-25 and 31-39, which are all of the claims pending in this application.

We **AFFIRM-IN-PART**.



## BACKGROUND

Appellant's invention relates to a method for file transfer restarts using standard Internet protocol. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method, in an Internet client, of downloading a download file, consisting of a set of component files, from an Internet server, comprising:

receiving from the server a profile of the download file that includes identifying information for each component file;

initiating a download sequence by which each component file is transferred, one-by-one, from the server using an Internet protocol;

upon interruption of the download sequence, restarting the download sequence with a component file affected by the interruption; and

when the download sequence is complete, reassembling the component files into the download file using the identifying information in the profile.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Pyne	5,446,888	Aug. 29, 1995
Averbuch et al. (Averbuch)	5,689,825	Nov. 18, 1997
Kauffman et al. (Kauffman)	5,857,203	Jan. 5, 1999

Claims 1, 3-5, 8-9, 12, 14-17, 21-25, and 31-39 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kauffman in view of Averbuch. Claims 6-7, 10, and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kauffman in view of Averbuch further in view of Pyne.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 23, mailed Nov. 14, 2002) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 22, filed Sep. 23, 2002) and reply brief (Paper No. 24, filed Jan. 14, 2003) for appellant's arguments thereagainst.

### **OPINION**

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

At the outset, we note that appellant has elected to group the claims into four separate groupings as indicated at page 3 of the brief. Therefore, we will select a representative claim from each grouping and address appellant's arguments thereto.

### CLAIM 1

From our review of the examiner's rejection at pages 3-4 of the answer, we find that the examiner has established a *prima facie* case of obviousness. Therefore, we look to appellant's brief for persuasive arguments of error in the *prima facie* case. With respect to independent claim 1, appellant argues that Kauffman does not teach or suggest when a download sequence is interrupted, restarting the download sequence with the piece affected by the interruption. (See brief at page 5.) We agree with appellant that Kauffman does not specifically discuss this feature, but we do note that Kauffman discusses that dividing the object into smaller pieces allows an intermediary part of a large object to be modified without accessing the beginning parts of the object. (Kauffman at column 8, lines 2-4 and **see also** column 11, lines 49-53.) We find this to be a suggestion that the entire object need not be handled, transmitted, or stored and that the constituent parts may be processed individually. Additionally, the examiner relies upon the teachings of Averbuch to suggest to restart at the affected portion only. (See answer at page 4.)

Appellant argues that Averbuch does not teach or suggest downloading a plurality of piece files. (See brief at page 5.) We disagree with appellant and find that the blocks taught by Averbuch would have been a collection of related data or program

records. We find no limitation in the language of independent claim 1 which would define the parameters of the set of component files. Appellant further argues that Averbuch teaches away from the claimed invention since Averbuch teaches downloading blocks of a fixed block size rather than dividing the file into pieces. (See brief at page 5.) This argument is not persuasive since we find no limitation that the component files cannot be of a fixed size. Therefore, we do not find that Averbuch teaches away from the claimed invention.

Appellant argues that Averbuch teaches a recognition of the problem recognized by appellant, but offers a very different solution. Appellant argues that this solution would not provide a motivation for the combination of references. (See brief at page 6.) We disagree with appellant. Appellant argues that there is no suggestion in Kauffman or Averbuch to support the combination and that the combination could take many forms. We disagree with appellant and find that the teachings of Kauffman and Averbuch are sufficiently related that skilled artisans would have looked to the two teachings to address storage and communication of large files/programs.

Appellant argues that the approaches of Kauffman and Averbuch are mutually opposed to one another, there is no reasonable expectation of success, the combination would require undue experimentation, and the examiner relied upon

hindsight. (See brief at page 7.) We disagree with appellant's laundry list form of arguments and do not find that the approaches of Kauffman and Averbuch are "opposite."

Appellant disagrees with the examiner's line of reasoning for the combination. (See brief at pages 7-8.) Appellant focuses on the "piece files" of Kauffman versus the "fixed sized blocks" of Averbuch and neither suggests the use of the other. Rather, we see that the motivation is in the use of smaller portions of a larger file or program in the storage and transmission of data which we find is amply taught and suggested by both references. This use would have improved the efficiency in the manipulation, storage and downloading of files. Therefore, we do not find that the examiner relied upon impermissible hindsight to reconstruct the claimed invention. Therefore, this argument is not persuasive, and we will sustain the rejection of independent claim 1 and the claims appellant elected to group therewith.

### **CLAIM 3**

Appellant argues that the examiner misapplies the concept of "inherency" and that in the combination of Kauffman and Averbuch an interrupted download could restart with any component file. Appellant argues the Office action proffers no reasoning as to why an interrupted download must necessarily restart with the affected file. (See brief at page 8.) Here, we find that appellant latches on to the use of

“inherent” in the final whereas the examiner modified this term to state that it is “apparent” and that Averbuch teaches the restart at the point of interruption. (Answer at page 4.) Therefore, this argument is not persuasive, and we will sustain the rejection of dependent claim 3.

### **CLAIM 32**

Again, appellant argues that the examiner’s use of “inherency” is in error. (See brief at page 9.) Again, the examiner has modified the language to delete the use of this term and that the system would have to use a profile or map or count to determine which files are still needed to be requested from the server. (See answer at page 5.) We agree with the examiner and find that the map of Kauffman would be used to request intermediate portions of a large object as discussed above. Therefore, this argument is not persuasive, and we will sustain the rejection of dependent claim 32 and claims 33-39 which appellant has elected to group therewith.

### **CLAIM 6**

Appellant argues that Pyne does not teach or suggest the use of Cyclic Redundant Codes (CRC) in a profile and that the reference key for a block as taught by Pyne is not equivalent to CRCs in a profile which is received before initiating a download of the component files. (See brief at page 10.) We agree with appellant that

Appeal No. 2003-1045  
Application No. 08/797,079

Pyne does not teach or suggest this specific use, and we find no convincing line of reasoning by the examiner for such a modification. Therefore, we will not sustain the rejection of dependent claim 6 and claims 10 and 16.

We do not find a specific argument for the separate patentability of dependent claim 7, and we do not find it is limited to the use of CRC as argued above with respect to dependent claims 6, 10, and 16. Therefore, this argument is not persuasive to dependent claim 7, and we cannot sustain the rejection of dependent claim 7 as appellant has indicated in the grouping.

### **CONCLUSION**

To summarize, the decision of the examiner to reject claims 1, 3-5, 7-9, 12, 14, 15, 17, 21-25 and 31-39 under 35 U.S.C. § 103 is affirmed, and the decision of the examiner to reject claims 6, 10, and 16 under 35 U.S.C. § 103 is reversed .



Appeal No. 2003-1045  
Application No. 08/797,079

No time period for taking any subsequent action in connection with this appeal  
may be extended under 37 CFR § 1.136(a).

**AFFIRMED-IN-PART**



ERROL A. KRASS  
Administrative Patent Judge



JOSEPH L. DIXON  
Administrative Patent Judge



HOWARD B. BLANKENSHIP  
Administrative Patent Judge

)  
)  
)  
)  
) BOARD OF PATENT  
) APPEALS  
) AND  
) INTERFERENCES  
)  
)  
)  
)

Appeal No. 2003-1045  
Application No. 08/797,079

DUKE W. YEE  
CARSTENS YEE & CAHOON, LLP  
P.O. BOX 802334  
DALLAS, TX 75380